

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ASHLEY ADAMS, et al.	§	
CARLETTE HUNTER JAMES, et al.	§	
CADE HUDSON	§	
PLAINTIFFS	§	CIVIL ACTION NO. 6:13-CV-712
	§	JURY DEMANDED
v.	§	
BRAD LIVINGSTON, et al.	§	
DEFENDANTS	§	

**DEFENDANT UTMB'S RESPONSE TO
PLAINTIFFS' NOTICE OF SUPPLEMENTAL AUTHORITY
AND AMENDED MOTION TO DISMISS**

Comes now Defendant, the University of Texas Medical Branch, by and through its attorney, the Attorney General of Texas, and files this Defendant UTMB's Response To Plaintiffs' Notice of Supplemental Authority and Amended Motion To Dismiss. Defendant shows the Court the following:

1. Defendant denies that plaintiffs were disabled as defined by the Americans With Disabilities Act and the Rehabilitation Act.
2. The University of Texas Medical Branch – Correctional Managed Care (UTMB) provides medical care to Texas prison inmates in prisons in the southern and eastern parts of the state. Texas Tech University Health Sciences Center – Correctional Managed Care (Texas Tech) provides medical care to Texas prison inmates in prisons in the northern and western parts of the state. In the *Wright* case, the inmate was housed in a prison unit served by Texas Tech. In the present case, plaintiffs were in a unit served by UTMB.
3. In the *Wright* case, plaintiff alleges that the inmate was suicidal and that he should have been housed in a cell without a ceiling grate to which ligatures

could be tied, and that he should have been housed with a cell mate. While Defendant Texas Tech disagrees with the facts as pled, defendant does understand plaintiff's allegation – the inmate should have been in a cell with no grate or with a cell mate.

4. In this case, plaintiffs allege that the inmates died because of extreme heat in the prison. Plaintiffs do not specify what they believe defendant UTMB should have done or not done about those conditions. Plaintiffs simply say the cell was too hot or was unsafe. Plaintiffs know from discovery that UTMB does not have any control over the temperature in the cells or buildings. Plaintiffs do not contend that UTMB caused or contributed to the temperatures in the prison, and UTMB does not have the authority to make cell changes or unit transfers unless medically indicated. Plaintiffs do not allege that the inmates' medical conditions met the criteria for a medical transfer, that their medical conditions were uncontrolled, ignored or mistreated. Plaintiffs do not allege that the inmates' medications should have been changed or withheld, or that they were mis-diagnosed.
5. UTMB cannot properly marshal its evidence or properly defend itself until it knows, specifically, how plaintiffs allege UTMB discriminated against the inmates *because of their alleged disabilities*, as required by the ADA and Rehabilitation Acts.
6. In the *Wright* case, cited by plaintiffs, the plaintiff also alleges that Texas Tech failed to ensure that the inmate took his medications related to his mental illness. The trial court granted defendant's Motion To Dismiss on that

issue because plaintiff failed to state a *prima facie* case for violations of the ADA. See Exhibit 1 to Plaintiffs' Notice Of Supplemental Authority In Response To UTMB's Motion To Dismiss *D.E. 65* at 9.

7. Defendant requests that this court grant its Amended Motion To Dismiss for failure to state a claim.

Respectfully submitted,

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NOTICE OF ELECTRONIC FILING

I, KIM COOGAN, Assistant Attorney General of Texas, certify that I have electronically submitted for filing **Defendant UTMB's Response to Plaintiffs' Notice of Supplemental Authority and Amended Motion to Dismiss** to the Court, on January 14, 2014, in the Eastern District of Texas, Tyler Division.

/s/ Kim Coogan
KIM COOGAN
Assistant Attorney General

CERTIFICATE OF SERVICE

I, KIM COOGAN, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing **Defendant UTMB's Response to Plaintiffs' Notice of Supplemental Authority and Amended Motion to Dismiss** has been served by placing same in the United States Mail, postage prepaid on January 14, 2014, addressed to:

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